

(2005) 04 AHC CK 0012

In the Allahabad High Court

Case No : Writ Petition No's. 34713 of 1993 and 47743 of 2003

Om Prakash Misra

APPELLANT

Vs

D.I.O.S. and Another

RESPONDENT

Date of Decision : 20-04-2005

Acts Referred:

Uttar Pradesh Secondary Education Services Commission and Selection Boards Act,
1982 — Section 33F

Citation : (2006) 5 AWC 4681

Hon'ble Judges : Vikram Nath, J

Bench : Single Bench

Advocate : P.C. Mishra and R.B. Singh, for the Appellant; Manjul Misra, S.C., for the Respondent

Judgement

Vikram Nath, J.—Heard Sri P. C. Mishra, learned Counsel for the Petitioner in both the writ petitions and learned standing counsel for the Respondents.

2. Writ Petition No. 34713 of 1993 has been filed for quashing the order dated 15.9.1993 passed by the District Inspector of Schools, Allahabad, whereby he declined to grant approval to the appointment of the Petitioner made by the Committee of Management on the ground that the vacancy against which the management made the appointment of the Petitioner was not a short-term vacancy and, therefore, against substantive vacancy the appointment of the Petitioner could not have been made by the Management. It is further stated in the said order dated 16.9.1993 that it is only against the vacancy caused on account of leave taken by a teacher or in case of suspension of the teacher that the management could have made the appointment. This Court vide order dated 23.9.1993, issued notices to the Respondent and in the meantime the operation of the order dated 15.9.1993 was stayed and further the Respondents were directed to permit the Petitioner to continue as L.T. grade teacher and also to pay salary. Pursuant to the interim order the Petitioner is continuing in the L.T. grade and is getting salary also.

3. Writ Petition No. 47743 of 2003 has been filed by the Petitioner for a direction to the Respondent to consider his claim for regularisation on the post of L.T. grade teacher in view of the provisions contained u/s 33F of U. P. Secondary Education Service Selection Board Act, 1982.

4. In both the writ petitions counter and rejoinder-affidavit have been exchanged.

5. The contention of the learned Counsel for the Petitioner is that he was appointed against the vacancy caused on account of promotion of L.T. grade teacher Sri Bhanu Pratap Pandey as lecturer on ad hoc basis and, therefore, the vacancy was short-term vacancy and not substantive vacancy. It is contended that all vacancies, which are not substantive vacancies are short-term vacancies. The counter-affidavit has been filed in both the writ petitions, in which it has been stated that the vacancy created on account of promotion of Bhanu Pratap Pandey was short-term vacancy against which Petitioner was appointed but it is alleged that the said vacancy was not created on account of leave of teacher or suspension of the teacher, therefore, the Committee of Management could not have made appointment. The contention sought to be raised in the counter-affidavit is to the effect that under the Removal of Difficulties order the management had the right to make appointment only against a vacancy caused due to leave of teacher or suspension of a teacher. The fact that the short-term vacancy was created on account of promotion of Bhanu Pratap Pandey having been admitted in the counter-affidavit the reason given in the impugned order does not appear to be correct. Even otherwise in view of the fact that a short-term vacancy is a vacancy which is not substantive vacancy the appointment of the Petitioner cannot be said to be not against a short-term vacancy. In fact it is against a short-term vacancy. In support of the contention the Petitioner has relied upon the Division Bench judgment of this Court in case of Arjun v. District Inspector of Schools and Ors., 1997 (2) UPLBEC 1250, wherein it was held that the vacancy having arisen on account of promotion of lecturer as Principal on ad hoc basis would be termed as a short-term vacancy. Applying the same analogy the vacancy in L.T. grade on account of promotion of the teacher in lecturer grade on ad hoc basis would also be termed as short-term vacancy.

6. In view of the submissions and the decision referred to above the impugned order dated 16.9.1993 passed by the District Inspector of Schools, Allahabad, cannot be sustained and is liable to be set aside.

7. Consequently, the Writ Petition No. 34713 of 1993 is allowed. The impugned order dated 15.9.1993 is set aside. The matter is remanded to the District Inspector of Schools with a direction to pass fresh orders with regard to the approval of the appointment of the Petitioner treating the vacancy to be a short-term vacancy subject to other necessary conditions being fulfilled. The District Inspector of Schools, Allahabad, will also consider the claim of the Petitioner with regard to arrears of salary for the period from 30.10.1992 the date on which he joined and the date from which salary was paid to the Petitioner pursuant to the interim order of this Court.

8. Further in case approval order is passed the Petitioner's case for regularisation u/s 33F of the 1982 Act, shall be considered by the concerned authority, i.e., the Regional Joint Director of Education, Allahabad and if the Petitioner fulfils all the conditions laid down under law appropriate orders will be passed.

9. Writ Petition No. 47743 of 2003 is disposed of with the aforesaid directions.

10. The exercise indicated above shall be completed by the respective authorities within a period of two months each (total four months) from the date on which certified copy of this order along with a representation annexing all the relevant material on which the Petitioner may wish to rely is produced before the respective authority. The period for taking decision with regard to regularisation will start after the order is passed with regard to approval of appointment.